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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Stephen A. Lindia

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EXAMINER

LOFTIS, JOHNNA RONEE

ART UNIT

PAPER NUMBER

3624

NOTIFICATION DATE

DELIVERY MODE

12/15/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Patents@chadbourne.com

Office Action Summary	Application No. 09/870,865	Applicant(s) LINDIA ET AL.	
	Examiner JOHNNA R. LOFTIS	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 27 September 2010.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 10-16, 19, 21-34 and 36-42 is/are pending in the application.

 4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 10-16, 19, 21-34 and 36-42 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1. The following is a final office action upon examination of application number. Claims 10-16, 19, 21-34, 36-42 are pending and have been examined on the merits discussed below.

Response to Arguments

2. Applicant's arguments filed 9/27/10 have been fully considered but they are not persuasive. Applicant argues Dirksen does not teach gathering substantial employment related interaction data corresponding to a relevant review period of time and generating and preloading a list of reviewees for the user in accordance with the gathered user interaction data. Examiner respectfully disagrees. The employment related interaction data corresponding to a relevant review period of time is shown by Dirksen in that the rating criteria is based on interaction of the reviewee during employment. Further, the list of reviewees is preloaded since the nominated rater must select the person he/she would like to review. Please see rejections below.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 10, 30 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the limitation, "gathering substantial employment related user interaction data corresponding a relevant review period of time", is unclear. Is 'user' directed to the reviewer or reviewee? Does 'interaction' reference interaction with the rating system or job

interactions? And how does this tie into the second limitation. Please make clarifications. For purposes of examination, Examiner submits that Dirksen inherently gathers this employment interaction data. The fact that reviewee information is preloaded into Dirksen's system shows that these reviewees must have some employment interaction since they are in the system to be selected and reviewed. See rejections below.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 10-14, 16, 19, 23, 24, 26, 27, 30-34 and 36-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Dirksen et al, US 6,853,975.

As per claim 10, Dirksen et al teaches gathering substantial employment related user interaction data corresponding to a relevant review period of time (column 4 – inherently substantial employment related data is collected over a period of time since the reviewee information is stored in the system to be selected and reviewed by a reviewer); generating and preloading a list of reviewees for the user in accordance with the gathered user interaction data (column 4, lines 40-64 – based on employee relationships, it is determined who should rate whom; further the list of reviewees is preloaded since the rater must access the system and select

the reviewee name from the system); receiving one or more reviewee selection from the preloaded list for employment performance review (column 4, lines 55 – 61 – the users initiate the rating process and select the name of the person they want to rate; when the user is notified that they have been requested to review another person, there is no indication that that person is obligated or required to do so); updating employee performance review information on the selected reviewees received by the computer system (column 4, line 62 - column 5 – the ratings information is input into the system by the user); processing the updated employee performance review information on the selected reviewees (column 5, lines 1-25 – the information is processed for report preparation); storing the processed employee performance review information (column 5, lines 1-25 – the rating data is stored and submitted to an external company for processing); and generating by the computer system an overall performance summary of the selected reviewees based on the stored performance reviews (column 5, lines 1-25 – performance ratings displayed).

As per claim 11, Dirksen et al teaches receiving one or more reviewer selection from the user, wherein the selected reviewers include at least one of the user, a superior, a peer, a subordinate and a client (column 1, lines 50-53 - the user selects a group of raters who will complete the ratings process; column 2, line 66 – column 3, line 2 – raters include managers and work partners).

As per claim 12, Dirksen et al teaches updating further comprises updating of said employee performance review information over a communication network (column 3, lines 25-30 – the evaluation information is transmitted over a network and column 5).

As per claim 13, Dirksen et al teaches the communication network is in the Internet (column 3, lines 25-30 – teaches the Internet).

As per claim 14, Dirksen et al teaches the communication network is a business enterprise intranet (column 3, lines 33-37 – the intranet is used for access to the rating system).

As per claim 16, Dirksen et al teaches requiring manager approval of the selected reviewees prior to the updating, processing and storage of the employee performance review information (column 3, lines 8-25 – the user submits a list of raters for approval by the manager, upon approval/disapproval, the list is stored on an internal file; when the user proceeds to the performance rating step, inherently the persons the user is rating have been approved since they are listed for selection).

As per claim 19, teaches identifying by a computer system one or more interactions during an evaluation period between a reviewer and one or more reviewees based on overlapping projects and clients (column 3, lines 1-3 – reviewers include managers and work partners); generating and preloading by the computer system a list of the reviewees related to the identified interactions (column 4, lines 60-61 – rater must select from list of reviewees, therefore list is preloaded); receiving by the computer system a selection of reviewees from the preloaded list (column 4, lines 60-61 – rater must select from list of reviewees, therefore list is preloaded); receiving by the computer system performance reviews on the selected reviewees, each review including performance ratings relative to expectations for respective reviewee's peer group (column 4, line 62 - column 5 – the ratings information is input into the system by the user); processing by the computer system the received performance reviews (column 5, lines 1-25 – the information is processed for report preparation); and generating by the computer system an

overall performance summary of the reviewees based on the processed performance reviews (column 5, lines 1-25 – performance ratings displayed).

As per claim 23, Dirksen teaches receiving from the user a request to a manager for approval of the selected reviewees; and receiving from the manager a message approving the selected reviewees for performance reviews (column 3, lines 8-25 – the user submits a list of raters for approval by the manager, upon approval/disapproval, the list is stored on an internal file; when the user proceeds to the performance rating step, inherently the persons the user is rating have been approved since they are listed for selection).

As per claim 24, Dirksen teaches storing data related to the processed performance reviews (column 4, line 62 – column 5, line 17).

As per claim 26, Dirksen teaches updating the preloaded list of the reviewees by adding a list of reviewers related to the identified interactions (column 3, lines 1-3 – reviewers include managers and work partners).

As per claim 27, Dirksen teaches receiving a selection of reviewees and reviewers from the updated preloaded list (column 3, lines 8-25 – the user submits a list of raters for approval by the manager, upon approval/disapproval, the list is stored on an internal file; when the user proceeds to the performance rating step, inherently the persons the user is rating have been approved since they are listed for selection; column 4, lines 60-61 – rater must select from list of reviewees)

As per claims 30-33, they are directed to the system for performing the method in claims 10-12 and 16. Therefore, the same art and rationale apply.

Claims 34, 36-42 are directed to the system for performing the method in claims 19-27.
Therefore, the same art and rationale apply.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 15 and 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksen et al, US 6,853,975.

As per claim 15, Dirksen et al does not explicitly teach inputting said employee performance review information by the user while the disconnected from the communication network. However, it is old and well known in the art of communication networks to allow for work to be complete while disconnected from the Internet wherein the information can be stored and communicated over a network when there is a network connection present. This feature allows for convenience to the operator wherein he or she can complete the rating while away from the office.

As per claim 28, Dirksen does not explicitly teach receiving self evaluation from the user. Official notice is taken that it is old and well known in the art of reviewing to include self review. It would have been obvious to one of ordinary skill in the art to include self review in the system of Dirksen as a way to collect a more inclusive evaluation of a reviewee.

9. Claims 21, 22, 25 and 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksen, US 6853975, in view of Ibarra, US 6119097.

As per claim 21, Dirksen teaches generating and processing reviews, but does not teach the processing further comprises indentifying trends in each reviewee's job performance in comparison with the reviewee's prior performance reviews. Ibarra teaches indentifying trends in each reviewee's performance (column 2, line 66 – column 3, line 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the system of Dirksen the ability to identify trends as taught by Ibarra since the claimed invention is merely a combination of old elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 22, Dirksen teaches performing reviews, but does not explicitly teach each performance review includes an action item for each reviewee to follow up on. Ibarra teaches determining action steps based on review. Action steps are agreed upon and to be taken by the employee to ensure standards are met in the future (column 6, line 61 – column 7, line 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the system of Dirksen the ability to indicating action items for follow up as taught by Ibarra since the claimed invention is merely a combination of old elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 25, Dirksen does not explicitly teach receiving one or more non-preloaded reviewees relating to one or more interactions identified by the user. Ibarra teaches setup of a new employee wherein the new employee is added to the system (column 10, lines 41-50). It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the system of Dirksen the ability to enter information for a new employee (who is inherently not preloaded into the system) as taught by Ibarra since the claimed invention is merely a combination of old elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 29, Dirksen does not explicitly teach the identification of the non-preloaded reviewees relating to one or more interactions further comprises searching by the user an employee roster using a plurality of search criteria. Ibarra teaches setup of a new employee wherein the new employee is added to the system (column 10, lines 41-50). Once the employee is in the system, the user may browse the system to retrieve the name of an employee who works under a manager (column 6, lines 27-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the system of Dirksen the ability to search for a non-preloaded employee as taught by Ibarra since the claimed invention is merely a combination of old elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHNNA R. LOFTIS whose telephone number is (571)272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on 571-272-6782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3624

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Johnna R Loftis/
Primary Examiner, Art Unit 3624